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C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 001757

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DEPARTMENT FOR L/OES A.ROACH
USPACOM FOR J6 P.PEDROZO

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SUBJECT: PSI AND LAW OF THE SEA: DISCUSSION WITH HASYIM
DJALAL

REF: JAKARTA 1656

Classified By: CDA John A. Heffern, for reasons 1.4 (b,d).

11. (C) SUMMARY: On June 19, Charge discussed the Proliferation Security Initiative (PSI) with Ambassador (ret.) Hasyim Djalal, Indonesia's foremost authority on maritime law. Djalal advises the GOI on maritime matters and his views are widely acknowledged to be a major factor in the GOI's reluctance to join PSI. While Djalal's writings make legal arguments against PSI, citing UNCLOS, his key verbal objection to us centered on the political pressures Indonesia could face as a major shipping country, if it were to join PSI. If Indonesia allowed another PSI member to board and inspect one of its flag ships, Djalal said, the action would be challenged by nationalists in the press, public fora and Parliament. If it declined to permit boarding of the suspect vessel, it would be subject to criticism by its PSI partners. The GOI resisted endorsing PSI, Djalal said, largely to avoid facing this dilemma. Charge also briefed Djalal on the Administration's recent announcement of support for UNCLOS, and on U.S. assistance to build Indonesia's maritime radar capability under Section 1206. Embassy would welcome additional input in responding to Djalal's concerns about PSI (see para 8). End summary.

12. (U) Indonesian officials routinely invoke concerns about the Law of the Sea in explaining Indonesia's reservations about joining the Proliferation Security Initiative (PSI). Typically they refer to a possible incompatibility of PSI with the UNCLOS (1982 agreement), but seldom cite specific UNCLOS provisions. This view is fairly uniform across the Department of Foreign Affairs (DEPLU), Department of Defense and Indonesian Navy. The official Indonesian view of PSI is informed largely by Ambassador (ret.) Dr. Hasyim Djalal, Indonesia's foremost expert on the Law of the Sea (and father of President SBY's foreign policy advisor, Dino Djalal). DEPLU's Secretary General Imron Cotan implicitly cited Djalal's concerns on UNCLOS in a recent discussion of PSI with PM Acting Assistant Secretary Stephen Mull (reftel).

PROLIFERATION SECURITY INITIATIVE

13. (U) Djalal said Indonesia's main point of concern over PSI's implications for UNCLOS centered on Indonesia's expected role as a PSI member in cases of interdiction:

-- Interdiction could be conducted only with the consent of the flag state; in Indonesia's case, approval to board an Indonesian-flagged ship could generate a nationalist backlash from the DPR, while refusal could open the GOI to accusations from the international community of abetting proliferation.

In reply, Charge acknowledged that Indonesia faced a set of competing priorities and needed to decide where WMD proliferation stood among these priorities.

¶4. (C) Djalal stated President Yudhoyono had recently asked the Ministers of Foreign Affairs and Defense to review the requirements for PSI to see if Indonesia could associate itself with it. The ministers had recommended Indonesian participation on an "ad hoc, case-by-case" basis, but this approach had been rejected by the legislature's Commission I (responsible for foreign and security affairs). Djalal said he was unfamiliar with the notion of a "bilateral PSI," something DEPLU has offered to explore with us in the past. Noting that India, China and South Korea had not joined PSI, Djalal suggested their accession might encourage Indonesia to reconsider its position.

ADDITIONAL RESERVATIONS

¶5. (U) At an international conference on maritime law in Kuala Lumpur in April 2007, Djalal took a different tack. In that discussion, he maintained PSI "could fundamentally affect the development of the Law of the Sea and maritime issues" and might "negatively affect" freedom of navigation on the high seas. PSI was an attempt, he opined, to change customary international law by expanding interdiction authority at the expense of coastal state and flag state

JAKARTA 00001757 002 OF 002

authority and jurisdiction; any such changes should be effected through "regional arrangements or organizations." Djalal did not cite these more legalistic points in our discussion on June 19, which focused only on the political issue.

¶6. In asserting that the application of PSI in Indonesian waters might be inconsistent with UNCLOS, Djalal cited three UNCLOS provisions:

- o Article 17, which guarantees the right of innocent passage through the territorial sea,"
- o Article 38, which assures all ships and aircraft of unimpeded transit rights, and
- o Article 52, which grants to ships of all states the right of innocent passage through archipelagic waters.

CONTAINER SECURITY INITIATIVE NOT A SUBSTITUTE

¶6. (C) Djalal said Indonesia had tried to strike a balance with the Container Security Initiative (CSI), and that an initially skeptical GOI had eventually become persuaded of CSI's merits. However, the United States had not yet approved Indonesia for CSI. Charge said CSI, which focused on ports, worked well in friendly countries but was ineffective in stopping direct shipments from one proliferator to another. Inspections and possible interdiction at sea was the only effective solution to the matter. A proliferator would remain outside the scope of CSI and, most likely, other international nonproliferation agreements as well. Any intervention in such a country's ports or other facilities would be tantamount to an act of war and was therefore something to avoid if at all possible. It was less aggressive to interdict a suspect ship in international waters, as PSI was designed to do. Djalal was not persuaded.

COMMENT AND REQUEST FOR GUIDANCE

¶7. (C) Djalal's argument appears to be, at least implicitly, that the UNCLOS provisions are absolute and override any

interdiction authority under PSI. We have tried to challenge this interpretation, so far to no avail. We believe the alleged legal contradictions are a smokescreen for avoiding tough political decisions on boarding, inspection and interdiction. In that vein, we will continue to remind the GOI of its nonproliferation obligations and commitments and urge GOI to review its priorities.

18. (C) Post welcomes Washington agencies' input for responding to these and any other legal objections Djalal has formally raised elsewhere to PSI.

HEFFERN